



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

Milwaukee County Department of Human Services, Petitioner

vs.

DECISION

██████████ Respondent

Case #: FOF - 170494

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Pursuant to petition filed December 3, 2015, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Milwaukee County Department of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on Monday, January 11, 2016 at Milwaukee, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: ██████████  
Milwaukee Enrollment Services  
1220 W. Vliet Street  
Milwaukee, Wisconsin 53205

Respondent:

██████████  
██████████  
██████████

I

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) received FoodShare benefits in Milwaukee County in January and March 2012.

2. Due to the respondent's enrollment in the FS program, the respondent was issued a QUEST card which the respondent utilized to access his monthly FS allotment provided to respondent. QUEST cards are electronic benefit transfer cards that replaced food stamp coupon booklets.
3. [REDACTED] was a licensed vendor of the United States Department of Agriculture Food and Nutrition Service, which enabled it to redeem QUEST cards.
4. [REDACTED] was classified as a mobile vendor and operated out of private vehicles. Between August, 2010 and January, 2013, [REDACTED] redeemed approximately \$778,000 in QUEST benefits from food stamp benefit recipients who were not purchasing food, but instead receiving cash for providing access to their QUEST benefits.
5. The agency alleges that the following transaction(s) were made using respondent's FoodShare card with [REDACTED]:

01/17/12	\$250.00
03/15/12	\$200.00
6. On or about February 15, 2013, [REDACTED], doing business as [REDACTED], pled guilty to a charge of unlawfully purchasing and redeeming FS benefits. [REDACTED] admitted that no food or groceries were ever provided by [REDACTED] and/or [REDACTED] in exchange for Quest benefits.
7. On December 11, 2015 the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent intentionally transferred FS benefits to [REDACTED], in the total amount of \$450.00, in exchange for cash payment(s).
8. The respondent failed to appear for the scheduled January 11, 2016 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

### DISCUSSION

The Code of Federal Regulations, at 7 C.F.R. §273.16(e)(4), provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

The hearing was conducted.

In order for the petitioning agency to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6).

I am not sustaining this IPV.

The Exhibits for this hearing were not delivered to me until after the hearing. To be candid, there have been a considerable number of Division of Hearings and Appeals hearings involving [REDACTED] transactions. The Exhibits for these hearings are standardized in large part but usually contain sufficient specifics as to the transactions made with a particular Quest card or cards and this card or these cards are shown to have been issued to individual that the agency seeks to sanction. The problem here is that the exhibits submitted are missing the penultimate exhibit – documentation showing that the card used for the transactions noted at Finding # 5 was issued to Respondent. Without an opportunity to review the transactions and the card associated with the transactions here prior to, and during the hearing, it was not possible to see if those exhibits were sufficient to demonstrate that an IPV occurred. And, ultimately, without that document I have no way to know that the card for the transactions noted at Finding # 5 was issued to Respondent.

Based upon the record before me, I cannot find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules. Thus this petition seeking to disqualify the respondent from the FS program for one year is denied.

### **CONCLUSIONS OF LAW**

That the evidence is not sufficient to clearly and convincingly demonstrate that Respondent violated, and intended to violate, the FoodShare program rules prohibiting an attempt to buy and sell FoodShare.

**NOW, THEREFORE**, it is

### **ORDERED**

The matter is remanded to the agency to rescind the Administrative Disqualification (IPV) from Respondent's FoodShare case. This action shall be taken within 10 days of the date of this Decision.

### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of February, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

c: Miles - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
Pamela Hazley - email





## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 19, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[Pamela.Hazley@dhs.wisconsin.gov](mailto:Pamela.Hazley@dhs.wisconsin.gov)